

# NORTHERN IRELAND BUDGET (NO. 2) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Northern Ireland Budget (No. 2) Bill as brought from the House of Commons on 10 July 2018 (HL Bill 123).

- These Explanatory Notes have been prepared by the Northern Ireland Office (NIO) in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So, where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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## Overview of the Bill

- 1 The Bill deals with matters arising from the continued absence of a Northern Ireland Executive, and the consequent inability of the Northern Ireland Assembly to pass legislation to provide the authority for departmental expenditure.
- 2 It authorises Northern Ireland departments and certain other bodies to incur expenditure and use resources for the financial year ending on 31 March 2019, as detailed in the corresponding Main Estimates volume and summarised in the Schedules to the Bill.

## Policy background

- 3 Ordinarily the passage of a Budget Bill to authorise the issue of sums from the Consolidated Fund of Northern Ireland is a devolved matter, taken through the Northern Ireland Assembly by Ministers in the Northern Ireland Executive. However, there has been no Executive since 9 January 2017, when the then deputy First Minister of Northern Ireland resigned, which also resulted in the First Minister ceasing to hold office. The Northern Ireland Assembly has not met since its first post-election meeting in March 2017. Without an Executive to agree a Budget and a sitting Assembly to pass Budget Bills, it falls to Parliament to legislate to provide authority for expenditure in Northern Ireland.
- 4 Budget Bills are normally passed twice during each financial year when the devolved institutions are in place. The first is done based on the opening budget position for the financial year following the agreement of a Budget. The second is done at the end of the financial year to seek authority for the changes which have been made to the budget allocations during the course of the financial year. In order to allow space for talks with the Northern Ireland political parties the first Northern Ireland Budget Bill was not brought forward at the start of the 2017-18 financial year. Instead the Northern Ireland Budget Act 2017 was passed by Parliament in November 2017 in order to provide the required authorisations and appropriations for the full 2017-18 financial year based on the most up to date spending plans at that time.
- 5 Following this, the Northern Ireland Civil Service continued to manage the delivery of services in Northern Ireland. This involved the reallocation and reprioritisation of some budgets, and also the allocation of new funding which has become available to the Northern Ireland administration as a result of the funds authorised by Parliament in the UK Estimates process. Parliament's authorisation for these revisions was provided in the Northern Ireland Budget (Anticipation and Adjustments) Act 2018 in March 2018.
- 6 In addition to providing the authorisations and appropriations for the revised amounts required for the full 2017-18 financial year, the Northern Ireland Budget (Anticipation and Adjustments) Act 2018 also provided authorisations and appropriations for a vote on account. This was to allow Northern Ireland departments and other public bodies to continue to deliver public services into the early months of the 2018-19 financial year.
- 7 This vote on account is a normal process for any Supply and Appropriation Bill and did not imply the setting of a 2018-19 Budget for the Northern Ireland departments and other public bodies. Its purpose was to provide access to cash and resources, approximately 45 per cent of the amount authorised for the previous financial year, to ensure that services could continue to be delivered pending the consideration of a Budget Bill for the full 2018-19 financial year.
- 8 The amounts authorised and appropriated in the vote on account will begin to be exhausted from 31 July 2018, and the purpose of the Bill now being introduced is to provide the authorisations and appropriations for the balance to complete each department's full 2018-19 cash and resource requirements. The figures in this Bill are based on the 2018-19 Budget announced in Parliament for

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the Northern Ireland departments by the Secretary of State on 8 March 2018, adjusted for the distribution of some centrally held funding, and technical transfers between departments for items such as central HR functions.

- 9 This Bill is a minimal step to ensure that public services can continue to be provided in Northern Ireland for the full financial year. It leaves in place the requirement for devolved spending decisions to be made by the Northern Ireland Executive or, in the ongoing absence of Ministers, the Northern Ireland Civil Service. In addition, the revised allocations set out in the Bill continue to be based on the advice of the Head of the Northern Ireland Civil Service and the Northern Ireland Civil Service Board.
- 10 No new money would be voted as a result of the Bill. Instead it will appropriate sums already provided to the Consolidated Fund of Northern Ireland through the UK Estimates process, together with revenue generated within Northern Ireland under the Assembly's devolved powers.

## Legal background

- 11 In the continuing absence of a Northern Ireland Executive, and the consequent inability of the Northern Ireland Assembly to pass a Budget Act, this Bill would provide the required authorisations and appropriations. It would be deemed for those purposes to be an Act of the Assembly. To that end, instead of the usual Assembly process, a Main Estimates document is being laid alongside this Bill and this would be deemed to be equivalent to the Assembly supply process.
- 12 The Bill will provide authorisations and appropriations for departments and other public bodies in Northern Ireland and will leave spending decisions, within the overall totals voted (and the more detailed totals in the Main Estimates document), to these departments.

## Territorial extent and application

- 13 The Bill extends across the United Kingdom but applies only to Northern Ireland. See the table in Annex A for a summary of the position regarding territorial extent.

## Fast-track legislation

- 14 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report, *Fast-track Legislation: Constitutional Implications and Safeguards*, the House of Lords Select Committee on the Constitution recommended that the Government should provide more information as to why a piece of legislation should be fast-tracked.

### Why is fast-tracking necessary?

- 15 It is necessary to fast-track this Bill to safeguard the continued delivery of public services and provide clarity for departments to safeguard public finances and therefore it cannot be delayed further in the absence of a Northern Ireland Executive and a sitting Assembly.
- 16 If there is delay in authorising the issue of sums and use of resources for the full financial year ending 31 March 2019 there is a risk that Government departments and other bodies in Northern Ireland will reach the limits of cash and resources authorised for them by the vote on account contained within the Northern Ireland Budget (Anticipation and Adjustments) Act 2018.
- 17 As a result of reaching these limits the only alternative would be for the Permanent Secretary of the Department of Finance in Northern Ireland to exercise the powers under section 59 of the

Northern Ireland Act 1998 and section 7 of the Government Resources and Accounts Act (Northern Ireland) 2001 in order to allow services to continue to be delivered in Northern Ireland once the amounts authorised by the vote on account become exhausted. These powers are emergency powers intended to be used only in the absence of alternative legal authority. They also involve a limit of up to 95 per cent of the previous year's provision and cannot authorise the use of accruing resources, therefore legislation would still be required, albeit at a later point in the year. Relying on these powers would risk creating unnecessary uncertainty around public finances.

### What is the justification for fast-tracking each element of the bill?

- 18 The provisions of this Bill are required to provide the necessary authorisations and appropriations to allow public services to continue to be delivered for the full financial year ending 31 March 2019.
- 19 This Bill does not authorise any new money. Instead it will appropriate sums already provided to the Consolidated Fund of Northern Ireland through the UK Estimates process, together with revenue generated within Northern Ireland. That being the case it would not have been appropriate to introduce this Bill ahead of the Supply and Appropriation (Main Estimates) Bill, but as set out above, the Bill is required to be passed before 31 July and therefore needs to be fast-tracked to allow Royal Assent before the Summer Recess.

### What efforts have been made to ensure the amount of time made available for Parliamentary scrutiny has been maximised?

- 20 The need for this Bill arises from the continued absence of a Northern Ireland Executive, such that there would now be insufficient time for a Budget Bill to be passed by a restored Northern Ireland Assembly. It is being taken forward at the latest possible point before the risk to public services could manifest but also after the point at which UK Main Estimates have been passed. The figures in this Bill are based on the Budget Statement made to Parliament and subject to debate in March 2018. In the circumstances it has not been possible to give Parliament more time to scrutinise this Bill without risking the delivery of public services in Northern Ireland.

### To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

- 21 The Bill is being introduced in the absence of a Northern Ireland Executive. The figures were discussed with the NI political parties and the NI business community in advance of the Secretary of State's Budget Statement of 8 March.

### Does the bill include a sunset clause (as well as any appropriate renewal procedure)?

#### If not, why does the Government judge that their inclusion is not appropriate?

- 22 The Bill does not contain a sunset clause. However, the Bill only applies to the financial year ending 31 March 2019.

### Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?

- 23 As noted above, the Bill only makes provision for the issue of sums and the authorisation of the use of resources for the financial year ending 31 March 2019.

### Has an assessment been made as to whether existing legislation is sufficient to deal with any or all the issues in question?

- 24 Yes. See paragraphs 16 and 17 of these Notes.

Has the relevant Parliamentary committee been given the opportunity to scrutinise the legislation?

25 Due to the need to implement the Bill urgently, the Northern Ireland Affairs Committee has not scrutinised the Bill in draft. However, the Committee has seen a draft copy of the Bill and received an informal technical briefing from NIO officials.

## Commentary on provisions of Bill

### Clause 1: Issue of sum out of the Consolidated Fund for year ending 31 March 2019 and appropriation of that sum

26 Clause 1 authorises the issue out of the Consolidated Fund of Northern Ireland the sum of £8,907,660,000 for the purposes set out in Schedule 1. This authorisation is in addition to the authorisation in section 4 of the Northern Ireland Budget (Anticipation and Adjustments) Act 2018. This is not new money, as it is an authorisation for issue from the Consolidated Fund of Northern Ireland as would normally be done by the Assembly. The sums referred to are those already appropriated by Parliament through the UK Estimates process, together with revenue generated within Northern Ireland.

### Clause 2: Power of the Department of Finance to borrow

27 Clause 2 authorises the temporary borrowing by the Northern Ireland Department of Finance of approximately half the sum covered by Clause 1. This is to safeguard against the possibility of a temporary deficiency arising in the Consolidated Fund of Northern Ireland and any such borrowing is to be repaid by 31 March 2019.

### Clause 3: Use of resources (other than accruing resources) in the year ending 31 March 2019

28 Clause 3 authorises the use of resources amounting to £9,934,658,000 in the year ending 31 March 2019 by the bodies listed in Clause 3(3) for the purposes specified in column 1 of Schedule 2; the amount authorised is set out in column 2 of that Schedule. As with Clause 1, this authorisation is in addition to the authorisation in section 6 of the Northern Ireland Budget (Anticipation and Adjustments) Act 2018.

29 There is a distinction between the cash sum authorised for issue in Clause 1, and the amount of resources authorised for use in Clause 3. The cash sum in Clause 1 includes cash used to finance capital investment, and also takes into account movement in working capital and payments based on provisions created in previous years. These do not constitute resource consumption. The resources authorised in Clause 3 exclude those items, but include non-cash items, mainly the depreciation of assets and creation of new provisions.

### Clause 4: Limits on use of certain accruing resources in the year ending 31 March 2019

30 Clause 4 sets limits on the accruing resources, including both operating and non-operating accruing resources, which may be used for the purposes specified in column 1 of Schedule 2 in the year ending 31 March 2019. These limits are set out in column 3 of that Schedule.

### Clause 5: Act to take effect as if it were a Budget Act of the Assembly etc

31 Clause 5 provides for this Bill to have the same effect as if it were an Act of the Northern Ireland Assembly. It also modifies references in other pieces of legislation to the Northern Ireland Estimates which would normally form part of the Assembly's supply process, including the

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consideration of the estimates by the Assembly's committees and the approval of the estimates document by a vote in the Assembly. For those purposes an Estimates document laid before Parliament, which will accompany the introduction of the Bill, is deemed equivalent to those Assembly processes. Clause 5(3) would require the Northern Ireland Audit Office and the Northern Ireland Public Service Ombudsman to prepare their accounts in accordance with the Estimates laid before Parliament.

### Clause 6: Repeal of spent provisions

32 Clause 6 is short and self-explanatory. It repeals two Budget Acts of the Northern Ireland Assembly from 2015 which are now deemed to be spent.

### Clause 7: Interpretation

33 Clause 7 is short and self-explanatory. It provides the meaning of some terms used with the Bill.

### Clause 8: Short title

34 Clause 8 is short and self-explanatory. It provides the short title for the Act, once it is passed.

### Schedule 1: Sums granted for the year ending 31 March 2019

35 Schedule 1 sets out the purpose and sums of money granted to Northern Ireland departments and other bodies under this Bill (under Clause 1).

### Schedule 2 – Amounts of resources authorised for use and amounts of accruing resources which may be used in year ending 31 March 2019

36 Schedule 2 sets out the amount of resources authorised for use by Departments and other bodies (see Clause 3), and the limits to use of accruing resources (see Clause 4).

## Commencement

37 The Bill will come into force on the day on which it is passed.

## Financial implications of the Bill

38 This Bill will authorise the issue of the sum of £8,907,660,000 from the Consolidated Fund of Northern Ireland and the use of resources to the amount of £9,934,658,000 for the year ending 31 March 2019 by Northern Ireland departments and other public bodies.

## Parliamentary approval for financial costs or for charges imposed

39 This Bill will authorise the issue of sums to, and the use of resources by, Northern Ireland departments and other public bodies. This is not new money, as it is an authorisation for issue from the Consolidated Fund of Northern Ireland and use of resources by departments and other public bodies in Northern Ireland that would normally be done by the Assembly. It is money already appropriated by Parliament through the UK Estimates process, together with revenue generated within Northern Ireland.

## Compatibility with the European Convention on Human Rights

40 Section 19 of the Human Rights Act 1998 requires a minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with Convention rights (as defined by section 1 of that Act).

41 The Bill Minister, Lord Duncan of Springbank, has made the following statement:

"In my view, the provisions of the Northern Ireland Budget (No. 2) Bill are compatible with Convention rights."

## Annex A – Territorial extent and application

42 The Bill extends only to Northern Ireland.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion required?
Clauses 1-8	No	No	No	Yes	N/A	N/A	Yes	No
Schedules 1 & 2	No	No	No	Yes	N/A	N/A	Yes	No

## Subject matter and legislative competence of devolved legislatures

43 All of the content of this Bill affects matters within the devolved (transferred) competence of the Northern Ireland Assembly. The Sewel Convention sets out that the UK Government will not normally legislate in an area of devolved competence without the agreement of the devolved legislatures. In the absence of the Executive and a sitting Assembly, and given the pressing need to ensure that public services can continue to be delivered within Northern Ireland, there is neither the time available nor the practical ability for the Assembly to provide a Legislative Consent Motion. The UK Government are clear, therefore, that the circumstances in which this Bill will be introduced would come within the exception allowed by the Convention.

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